

STATE OF IDAHO  
WATER RESOURCE BOARD

RECEIVED

DEC 24 2019

DEPARTMENT OF  
WATER RESOURCES

## APPLICATION TO SELL OR LEASE A WATER RIGHT TO THE WATER SUPPLY BANK

Designated Applicant CIRCLE C HOMEOWNERS ASSOC., INC.

(Select one owner – see item 1A on the application)

Water Right No. 78-2011

(One water right per application)

Is this application being submitted with a rental application as a lease/rental package?

Yes ☐ No ☒

This application must be prepared in accordance with the minimum requirement checklist below. Use this checklist to ensure all necessary documentation has been provided. This checklist is part of the lease application and must be included with the lease application. **Applications that do not meet the minimum requirements will not be processed and may be returned or denied.**

### MINIMUM REQUIREMENT CHECKLIST

All items must be checked as either *Attached (Yes)* or *Not Applicable (N/A)*

Yes

- ☒ Completed *Application to Sell or Lease a Water Right to the Water Supply Bank*.
- ☒ Application filing fee of \$250.00 per water right. If you are submitting more than one lease application and the water rights have an overlapping, common place of use, or a common diversion rate or volume, the total fee for all water rights is \$500.00. For places of use, multiple water rights must be used to irrigate the same lands in order to qualify for the joint filing fee. Individual filing fees are required for water rights that share a common permissible place of use but which cover separate acres within the permissible place of use.
- ☒ Confirmation this form has been printed **single sided**, per requirement of the Water Supply Bank.

Attachment N/A Yes

- 1A ☐ ☒ Signatures and contact information for **all owners** of the water right to be leased or sold on this application.
- 1B ☐ ☒ An Internal Revenue Service (IRS) Form W-9 for the Designated Applicant.
- 1C ☒ ☐ *Notice of Change in Water Right Ownership* form (accessible from [www.idwr.idaho.gov](http://www.idwr.idaho.gov)).
- 1D ☐ ☒ Contact information for an authorized representative and documentary proof they are authorized to represent the Designated Applicant on this application. If the Designated Applicant is a business, partnership, municipality, organization or association, include documents identifying officers authorized to sign or act on behalf of the entity.
- 2 ☐ ☒ Description of a water right portion offered to the Water Supply Bank.
- 3 ☐ ☒ A map that clearly outlines the specific location where irrigated acres will be dried up, or where a beneficial use of water will be suspended. You have the option of printing a map using the map tool on IDWR's website at: [www.idwr.idaho.gov](http://www.idwr.idaho.gov).
- 4A ☒ ☐ Written consent from irrigation district or water delivery company.
- 4G ☒ ☐ Evidence demonstrating the water right has not been forfeited pursuant to Section 42-222(2), Idaho Code.

#### Department Use Only

Fee Amount \$ 2500.00Received By: ICADate Received: 12-24-19Receipt # C108158W-9 received? Yes ☒ No ☐ (Route W-9 to Fiscal)Name on W-9: Circle C Ranches HOA

STATE OF IDAHO  
WATER RESOURCE BOARD

**APPLICATION TO SELL OR LEASE A WATER RIGHT**  
(Continued)

**1. CONTACT INFORMATION**

- A. This application must be completed by a Designated Applicant who is a current owner of the water right being sold or leased to the Water Supply Bank. If there are additional current owners, those individuals must authorize the Designated Applicant to represent them on this application by completing and signing Attachment 1A of this application package.

Designated Applicant CIRCLE C RANCHES HOMEOWNERS ASSOCIATION, INC.

Mailing Address PO BOX 143, NEW MEADOWS, ID 83654

Street

City

State

Zip Code

Email Address \_\_\_\_\_

Phone Number \_\_\_\_\_

☒ The Designated Applicant is the sole owner of the water right being sold or leased to the Water Supply Bank.

OR

☐ The Designated Applicant is representing additional water right holders who have completed Attachment 1A.

- B. Has the Designated Applicant submitted an IRS Form W-9 to this Department within the last 2 years? Yes ☐ No ☒

If no, complete the form and attach to this application (Attachment 1B).

- C. Are all applicants on this form listed in IDWR's records as the current owners of the water right? Yes ☒ No ☐

If no, attach a *Notice of Change in Water Right Ownership* form along with the required documentation and fee (Attachment 1C).

- D. Is this application being completed by an authorized representative of the Designated Applicant? Yes ☒ No ☐

If yes, representatives (includes employees of Designated Applicant companies) must complete this section and submit documentary proof of their authority to represent the Designated Applicant (Attachment 1D).

Name of Representative JOHN CURTIS HUCKS Organization JOHN HUCKS, ATTORNEY AT LAW

Professional Title ATTORNEY FOR APPLICANT Email Address huckslaw@yahoo.com

Mailing Address PO BOX 737, NEW MEADOWS, ID 83654 Phone Number 208-347-4128

☐ Send all correspondence for this application to the representative and not to the Designated Applicant.

OR

☒ Send original correspondence to the Designated Applicant and copies to the representative.

**2. DESCRIPTION OF WATER RIGHT OFFERED TO THE BANK**

☒ The full water right is being offered to the Bank.

OR

☐ A part of the water right is being offered to the Bank.

If a portion of the water right is being offered, **complete Attachment 2.**

**3. MAP**

Attach a map of the point(s) of diversion and place(s) of use proposed to be idled by this lease application. Make sure the idled place of use is outlined and annotated with legal land descriptions (Township, Range, Section and Quarter-Quarters) or with GPS coordinates. For irrigation purposes, mark the number of acres you desire to idle. If the water right proposed for lease is located within a permissible place of use (PPU) and portions of the PPU will continue to receive water from non-leased water rights, clearly outline on a map the acres within the PPU that will continue to be irrigated, as well as acres that will be idled during the lease term. Label the map **Attachment 3.**

STATE OF IDAHO  
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**APPLICATION TO SELL OR LEASE A WATER RIGHT**  
(Continued)

**4. GENERAL INFORMATION**

- A. Is the diversion works or system owned or managed by an irrigation district or water delivery company? Yes ☐ No ☒  
If yes, provide written consent from the company, corporation or irrigation district authorizing the proposed sale or lease (Attachment 4A).

*If your water right is delivered through a canal, lateral or ditch operated by a canal company, irrigation district, or similar delivery entity, your lease request must include written consent from the company, district, or similar entity for your removal of water from its system pursuant to [Section 42-108, Idaho Code](#) and [IDAPA WSB Rule 37.02.03.25.02e](#).*

- B. Please provide a description of the current water diversion and delivery system.

THERE IS CURRENTLY NO ACTIVE DIVERSION AND DELIVERY SYSTEM

- C. Describe any other water rights used for the same purpose at the same place of use as the water right being offered to the Bank.

NO OTHER RIGHTS BEING USED OTHER THAN DOMESTIC WELLS AND SEASONAL ANIMAL GRAZING

- D. Are any of the water rights identified in Section 4C stacked with the water right proposed for lease? Yes ☐ No ☒

*Stacked water rights are used together to achieve a common beneficial use, such as irrigation of the same lands. Stacked water rights cannot be separated and must be jointly leased to the Water Supply Bank. Stacked water rights qualify for the multiple fee payment of \$500.*

- E. Will the present place of use continue to receive water from any other source? Yes ☐ No ☒

If yes, explain the relationship between the different water sources and how enlargement of the authorized use will not occur if this water right is leased.

- F. Identify annual volumes and/or rates of water diverted in the last 5 years to accomplish the beneficial use authorized by this water right.

ALL ELIGIBLE WATER RIGHTS HAVE BEEN BANKED FOR THE LAST 5 YEARS

- G. Has any portion of this water right undergone a period of five or more consecutive years of non-use? Yes ☐ No ☒

If yes, describe the circumstances and attach evidence to demonstrate how the water right has not been lost through forfeiture (Attachment 4G). See [Section 42-223, Idaho Code](#) for exceptions to forfeiture. Your application may be denied if forfeiture concerns are not addressed.

- H. Is this water right involved in any other IDWR process, such as an application for transfer or a mitigation plan?

If yes, describe.

Yes ☐ No ☒

STATE OF IDAHO  
WATER RESOURCE BOARD

**APPLICATION TO SELL OR LEASE A WATER RIGHT**  
(Continued)

**5. SALE/LEASE AGREEMENT**

- A. Is the water right, or portion thereof, offered to the Idaho Water Resource Board (IWRB) for sale ☐ or lease ☒?

If lease, specify the years when the use of water will be suspended:  $\frac{2020}{\text{(Year)}}$  to  $\frac{2025}{\text{(Year)}}$  (maximum lease period 5 calendar years).

- B. Show the minimum payment acceptable to the seller/lessor. The minimum payment may be shown as the "current rental rate" as established by the IWRB. Include the method of determining the minimum payment if other than the current rental rate.

\_\_\_\_\_  
CURRENT RENTAL RATE  
\_\_\_\_\_

I hereby assert that the information contained in this application is true to the best of my knowledge, and that I have the authorities necessary to offer this water right for sale or lease to the Idaho Water Resource Board.

The Designated Applicant acknowledges the following:

1. Payment to the Designated Applicant is contingent upon the sale or rental of the water right from the Bank.
2. While a water right is in the Bank, the seller/lessor of the water right may not use the water right, even if the water right is not rented from the Bank.
3. A water right accepted into the Bank stays in the Bank until the Designated Applicant receives written confirmation from the Board or Water Supply Bank that the water right has been released from the Bank.
4. While a water right is in the Bank, forfeiture is stayed.
5. Acceptance of a water right into the Bank does not, in itself, confirm the validity of the water right or any element of the water right.

Circle C Ranches Homeowner's  
Association, Inc.

By: J. Robert Polk, President

  
\_\_\_\_\_  
Signature of Designated Applicant

Printed Name

12.19.2019  
Date

JOHN CURTIS HUCKS, ATTORNEY

Printed Name

12/2/2019  
Date

  
\_\_\_\_\_  
Signature of Authorized Representative

**Mail to:**  
Idaho Department of Water Resources  
P.O. Box 83720  
Boise, ID 83720-0098

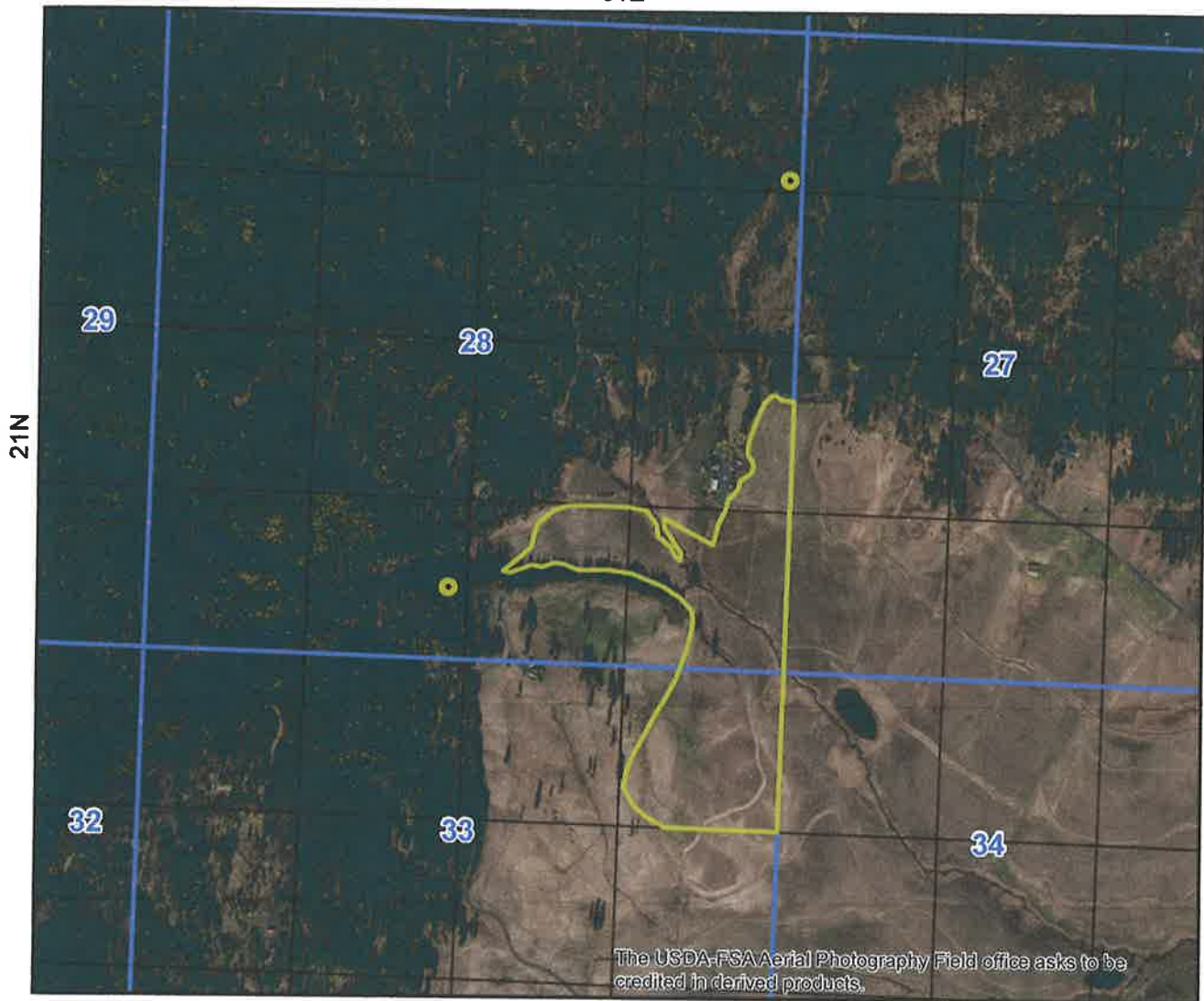
State of Idaho  
Department of Water Resources

# Water Right 78-2011

## IRRIGATION

The map depicts the place of use for the water use listed above and point(s) of diversion of this right as currently derived from interpretations of the paper records and is used solely for illustrative purposes. Discrepancies between the computer representation and the permanent document file will be resolved in favor of the actual water right documents in the water right file.

01E



-  Point of Diversion
-  Place Of Use Boundary
-  Townships
-  PLS Sections
-  Quarter Quarters

0 0.175 0.35 0.7 Miles





State of Idaho

DEPARTMENT OF WATER RESOURCES

322 E Front Street, Suite 648 • PO Box 83720 • Boise ID 83720-0098

Phone: (208) 287-4800 • Fax: (208) 287-6700

Website: [idwr.idaho.gov](http://idwr.idaho.gov) • Email: [idwrinfo@idwr.idaho.gov](mailto:idwrinfo@idwr.idaho.gov)

BRAD LITTLE  
Governor

GARY SPACKMAN  
Director

May 11, 2021

CIRCLE C RANCHES HOA  
PO BOX 143  
NEW MEADOWS ID 83654-0143

RE: **WATER SUPPLY BANK LEASE CONTRACT 1090  
FOR WATER RIGHTS 78-4272A, 78-4272B, 78-4272C, 78-4272D, 78-4272E, 78-4272F,  
78-4272G, 78-4172H, 78-7031 & 78-7083**

Dear Lessor:

Water rights **78-4272A, 78-4272B, 78-4272C, 78-4272D, 78-4272E, 78-4272F, 78-4272G, 78-4172H, 78-7031 & 78-7083** were leased into the Water Supply Bank (Bank) as of January 1, 2019, in accordance with the enclosed executed lease contract. **Your water rights, as described on the lease contract, are considered leased into the Bank and should remain unused until they are formally released from the Bank.** More information and further restrictions placed on your water rights while leased can be found in conditions of acceptance of the lease contract. Read the conditions of acceptance carefully.

The rights will automatically be released from the Bank on **December 31, 2023**, unless the rights are released earlier by the Water Resource Board (Board). On behalf of the Board, the Department of Water Resources (Department) can evaluate an early release of the lease contract upon your request. To release the water rights from the Bank prior to the release date, submit a written request on the *Request to Release a Water Right from the Bank* form. This form is available on our public website at [www.idwr.idaho.gov](http://www.idwr.idaho.gov). **Please note your water rights may not be available for immediate release if they have been rented or are being considered for a future rental. Furthermore, it is at the discretion of the Department whether or not a water right can be released early from a lease contract.**

Please note that water right 78-2011 was removed from the contract.

If you have questions regarding this matter, please contact Phill Hummer at [phill.hummer@idwr.idaho.gov](mailto:phill.hummer@idwr.idaho.gov) or 208-287-4925.

Sincerely,

*Jean Hersley*

for  
Water Supply Bank

Enclosure: Executed Lease Contract

c: IDWR- Western Region  
Hucks Law

## MEMORANDUM

DATE: 05/10/21  
TO: Right 78-2011, WSB Lease Application 1576 (Contract 1090)  
FROM: Phill Hummer (Water Rights Supervisor)  
RE: Validity of Water Right and Acceptance into the Bank

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On December 24, 2019 Circle C Homeowners Association Inc. filed an application to lease water right 78-2011 along with several other water rights (application 1576). The application form listed John Hucks as the representative of the applicant. The application was reviewed by Jean Hersley and a lease contract was drafted and mailed to the applicant. They signed the contract and returned it according to normal water supply bank procedures. Before signing the contract on behalf of the IWRB and IDWR I conducted a review of the water rights involved in the application.

Review of the water right file and aerial imagery suggests water right 78-2011 may be subject to forfeiture. According to the Department's Administrative Memorandum Multiple Programs No. 2 the Department will presume that resumption of use or any defense or protection to forfeiture initiated before the end of the sixth calendar year will prevent a finding of forfeiture. The partial decree for the right was issued on November 6, 2007. Review of the place of use using aerial imagery available to the Department and Climate Engine does not reveal obvious irrigation occurring within the last five years. Irrigation or a defense should have been initiated before the end of 2013.

Rights 78-7031 and 78-7083 were accepted into the Water Supply Bank (Bank) starting March 3, 2006 for an indefinite period of time. Which was later amended to end in 2018. Right 78-2011 was not included in the applications filed in 2006 and was not accepted into the Water Supply Bank at this time. Although a condition of the right limits irrigation under 78-2011 to 606.6 acres when combined with rights 78-7031 and 78-7083, portions of the right do not fully overlap these two rights making them not entirely stacked. 78-2011 could potentially be utilized fully while 78-7301 and 78-7083 are leased into the Bank without an enlargement of the right provided any rental of 78-7301 and 78-7083 are limited to combine total of 526.6 acres (606.6 acres of the combined limit minus the 80 acres authorized under 78-2011). For these reasons I don't not believe the lease contract executed in 2006 was done in error when right 78-2011 was not included.

Water Supply Bank rules (IDPA 37.02.03.025) require Water Supply Bank applications to be submitted with information demonstrating water rights proposed for lease have not been lost through abandonment or forfeiture. Question 4.f of the current application form asks the applicant to provide validity information. The application wrote in the section, "All eligible water rights have been banked for the last five years." Since it current records indicate that 78-2011 was not previously leased, this statement alone is not enough information to accept right 78-2011

into the Bank. On July 7, 2020 I received an email from Jean Hersley (staff member processing application 1576) indicating she had asked John Hucks to supply additional information supporting the validity of right 78-2011. Jean Hersley further indicated John Hucks' response was that the water right owner thought right 78-2011 was leased into the bank. In my opinion this does not qualify as a valid defense or protection to forfeiture. I sent an additional letter on August 19, 2020 attempting to clarify my findings, the WSB rules, and asking for additional validity information. Following the letter I have numerous lengthy telephone conversations With Mr. Hucks discussing IRWR records for 78-2011 and Circle C HOA's options. In summary, the HOA believed 78-2011 had been previously leased and therefore could be accepted again. I do not think the record shows that was true but I wanted to give them the opportunity to provide documentation that might be missing from the water right and water supply bank record that would demonstrate their opinion. Every conversation and follow up was delay considerably because Mr. Hucks had to present what he learned from our conversations and their options to the HOA board at regular meetings, then he would call me again with new questions. I never received anything from the applicant or Mr. Hucks to show right 78-2011 should be accepted for least to the water supply bank. Per IDPA 37.02.03.025.04 the application proposing to lease right 78-2011 could be considered incomplete and not a valid request. However, the other rights listed on water supply bank application 1576 are likely valid and review indicated these rights can be accepted for lease.

I had asked Mr. Hucks to either get confirmation from the HOA board or confirm himself that it was ok to proceed with application 1576 by modifying the lease contract to remove right 78-2011. I never received confirmation from the applicant that they agreed to the terms of the lease in this manner. However, I do not think that the application should be rejected completely when the other water rights can be leased. The original lease contract had been returned signed by the applicant indicating the applicant agreed to the individual water right portions to be idle and the conditions of acceptance listed. None of those items are changed. Therefore, I believe a new version of the contract can be completed using the signature page from the original contract without the applicant specific consent allowing water supply bank staff to finish processing application 1576 without rejecting it completely because the applicant is no longer communicating with IDWR. They have the opportunity to object and the contract can be modified if required.

The decision to not accept right 78-2011 into the Bank is not a determination of the validity of the right. There may be valid reason why right 78-2011 has not been lost to forfeiture but that reason is not evident at this time. I recommend that right 78-2011 is not accepted into the Bank and removed from Lease Contract 1090.

## **Hummer, Phill**

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**From:** John Curtis Hucks <huckslaw@yahoo.com>  
**Sent:** Monday, September 14, 2020 11:26 AM  
**To:** Hummer, Phill  
**Cc:** Bob Polk; Bank  
**Subject:** Re: Circle C Home Owners Association - Additional Information request  
**Attachments:** Circle C HOA adtl info request.pdf

Mr. Hummer,

This will confirm our telephone call on 9/11/20 regarding the above matter. As we discussed, I will be submitting background materials to you this week regarding the history of the HOA's water bank submissions. Based on our conversation it is my understanding that the 30 day timeline for response has been placed on hold while we work through the status of Water Right No. 78-2011. Thank you for your assistance in this matter.

Sincerely, John Hucks

**John Curtis Hucks**  
**Attorney at Law, P.C.**  
**P.O. Box 737**  
**New Meadows, ID 83654**  
**208-347-4128 - Office**  
**208-347-3994 - Facsimile**  
**208-315-0113 - Cellphone**

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On Thursday, August 20, 2020, 08:06:32 AM MDT, Veibell, Amanda <amanda.veibell@idwr.idaho.gov> wrote:

Good Morning,

The attached letter is being mailed today to your client. If you have any questions, please reach out to bank@idwr.idaho.gov.

Thank you.

## Hummer, Phill

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**From:** Hersley, Jean  
**Sent:** Thursday, July 2, 2020 8:29 AM  
**To:** Hummer, Phill; Grimm, Angie; Buyer, Remington  
**Subject:** RE: WSB Leases for Circle C Ranches HOA

I asked the attorney about this right, 78-2011. He can't remember why it wasn't included or more importantly, why the Department never asked about it. There isn't a review memo so I don't know why this right was missed or why it wasn't asked about. It wasn't used while the other rights were in the Bank because they assumed all the rights were leased. If they had used this right, they would have been in violation of their lease and could have gotten a NOV because the land was supposed to be idled.

*Jean Hersley  
Technical Records Specialist II  
Idaho Dept Water Resources  
(208) 287-4942*

**From:** Hummer, Phill  
**Sent:** Thursday, July 2, 2020 8:14 AM  
**To:** Hersley, Jean <Jean.Hersley@idwr.idaho.gov>; Grimm, Angie <Angie.Grimm@idwr.idaho.gov>; Buyer, Remington <Remington.Buyer@idwr.idaho.gov>  
**Subject:** RE: WSB Leases for Circle C Ranches HOA

There is a sticky not on the file that says I sent you an email on 2/20/20 asking you to ask the applicant for more information. Below is a copy/paste of the email I sent you on 4/6/20 in response to basically the same question you asked me back in april, the answer is the same today as it was then.

Jean,

Last thing I remember occurring on this was an email I sent you in late February saying that I didn't think the imagery showed use had occurred under right 78-2011 and asking you to get information from the applicant that supported the validity of the right. Their other option would be removing 78-2011 from the application and the lease could be processed similar to the previous one. Doesn't look I like I received any follow up emails since that one.

-Phill

I still haven't heard whether the applicant had provided evidence to support the validity of the right or if they wanted to proceed without leasing 78-2011. We discuss some situations in the past where rights have been accepted but I didnt think those situations were compareable. In my opinion, it is possible to lease the rest of the rights without 78-2011 by reducing the number of acres in the combined limit and available for rent. Also in this situation I won't proceed just because it has been done before. I think it was incorrect to do so and that accepting a right into the bank that is potentially forfeit would violate the water supply bank rules. Without further information I will not sign the lease contract.

-Phill

**From:** Hersley, Jean  
**Sent:** Tuesday, June 30, 2020 12:12 PM  
**To:** Grimm, Angie <Angie.Grimm@idwr.idaho.gov>; Hummer, Phill <Phill.Hummer@idwr.idaho.gov>; Buyer, Remington

<Remington.Buyer@idwr.idaho.gov>

**Subject:** WSB Leases for Circle C Ranches HOA

I received a call from the attorney for Circle C Ranches HOA. He needs to know what is going on with the lease contracts.

We received them signed months ago. There was a question about one of the rights, 78-2011 I believe, that was missed when they placed other rights in the Bank in 2006. There is nothing in the file of why this right was not placed in the Bank or even if anyone looked at it. I have to assume no one looked at it or knew it existed. We have had this situation before and have allowed the right in the Bank because the Dept. should have asked that it be placed in the Bank along with other overlapping rights. Please let me know what I can tell the attorney.

*Jean Hersley  
Technical Records Specialist II  
Idaho Dept Water Resources  
(208) 287-4942*



State of Idaho

**DEPARTMENT OF WATER RESOURCES**

322 E Front Street, Suite 648 • PO Box 83720 • Boise ID 83720-0098

Phone: (208) 287-4800 • Fax: (208) 287-6700

Website: [idwr.idaho.gov](http://idwr.idaho.gov) • Email: [idwrinfo@idwr.idaho.gov](mailto:idwrinfo@idwr.idaho.gov)

BRAD LITTLE  
Governor

GARY SPACKMAN  
Director

08/19/20

CIRCLE C HOMEOWNERS ASSOC INC  
PO BOX 143  
NEW MEADOWS ID 83654

**Re: Application to Lease Right 78-2011 – Additional Information Required**

Dear Applicant:

I am trying to finish processing water supply bank application 1576 for rights 78-2011, 78-7031, 78-7083 and 78-4272A-H. During review of these rights the validity of right 78-2011 was unclear. Per water supply bank rules (IDAPA 37.02.03) an application to lease a water right is incomplete unless the applicant provides adequate evidence that the right has not been lost to forfeiture. The partial decree for right 78-2011 was issued in 2007. Since that time it does not appear that irrigation under the right has occurred and the right has not been previously leased into the Water Supply Bank. A lease contract was executed in 2006 for rights 78-7301 and 78-7083, but right 78-2011 was not included in that contract. I don't believe this was a mistake by the Department. The application forms did not request to lease right 78-2011, the rights do not appear to be completely stacked, and rental of rights 78-7031 and 78-7083 could occur without enlargement if any rentals do not exceed the combined limit of the rights (606.6 acres). Therefore it is possible rights 78-7031 and 78-7083 could be accepted into the Water Supply Bank without right 78-2011.

Right 78-2011 can be accepted into the Water Supply Bank at this time through Contract 1090 along with the rest of the rights according to the applications if you can supply information to show right 78-2011 has not been lost to forfeiture. Information to support the validity of right 78-2011 must be submitted within thirty (30) days. If adequate information is not received within that deadline the application to lease right 78-2011 will no longer be considered a valid request and water right 78-2011 will be removed from Lease Contract 1090. If you have any questions regarding this matter, please call me at 208-287-4925.

Sincerely,

Phill Hummer  
Water Rights Supervisor, State Office  
Email: [phill.hummer@idwr.idaho.gov](mailto:phill.hummer@idwr.idaho.gov)

CC: John Hucks, Attorney for the applicant